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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,621	09/17/2001	Jerry G. Hodsdon	67134-5040	6827

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No. 09/954,621	Applicant(s) HODSDON ET AL.	
	Examiner Nasser Ahmad	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006 and 10 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19,21-29,44,47-50,52,54-75,77-81,84-89,91-93 and 95-133 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,21-29,44,47-50,52,54-75,77-81,84-89,91-93 and 95-133 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Maintained

1. Claim 65 is rejected under 35 U.S.C. 112, first paragraph, for reasons of record made in the last Office Action of 2/9/2006.

Response to Arguments

2. Applicant's arguments filed 7/10/2006 and 8/10/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that *the phrase "not being a weakened line" finds clear support in the application as shown in figure-4 wherein the line 180 is not a weakened line or in figure-5 showing line 148 which is not a weakened line*, applicant should note that the lines 180 and 148 in figures 4 and 5 of the application are considered to be weakened line because it shows that the label is bent along said line. Since the labels were bent along said lines, said lines are found to be weakened lines. Applicant is directed to MPEP 2173.05(i) because the negative phrase appears to claim what the applicant did not invent.

Rejections Withdrawn

3. Claims 19-26, 28-29, 65, 69, 71-72, 73, 77, 79-81, 92, 95-97, 102-103, 105-106 and 110 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrow (6149518) made in the last Office Action has been withdrawn in view of the amendment filed on 7/10/2006 and 8/10/2006.

4. Claims 44-45, 47-48, 50, 52, 54-55, 57-62, 67, 75, 84-85, 87-88, 89, 98-101, 104 and 107-109 are rejected under 35 U.S.C. 102(e) as being anticipated by Atkinson (6479118) made in the last Office Action has been withdrawn in view of the amendment.

5. Claims 49, 56, 63-64, 68, 86, 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson made in the last Office Action has been withdrawn in view of the amendment.

6. Claims 27, 67, 70, 74, 78, 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrow made in the last Office Action has been withdrawn in view of the amendment.

Response to Arguments

7. Applicant's arguments with respect to claims 19, 21-29, 44, 47-50, 52, 54-64, 66-75, 77-81, 84-89, 91-93, 95-133 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 19, 21-26, 29, 44, 47-48, 50, 52, 54-55, 65, 67, 69, 71-73, 75, 77, 79-81, 84-85, 87-89, 92, 95-100, 102-108, 110-113, 115-133 are rejected under 35 U.S.C. 102(e) as being anticipated by Farrow (6149518).

Farrow relates to a label sheet construction (12) comprising a liner sheet (22) and a facestock sheet (34) adhered to the liner sheet (figure-3). The facestock sheet includes at least one cut line (57) (col. 5, lines 24-28 mentions that the non-label waste portion surrounding the label is not shown as it may be removed) therethrough but not the liner sheet to form an entire perimeter of a first label (col. 4, lines 2-3). Figure-1 shows a second label spaced from the first label. The construction includes a weakened line segment (14a) in the facestock outside of and extending from the first label to the second label. The line (14a) does not extend through the liner and is preferably a perforation line (col. 5, lines 40-42). Since the perforation line a preferable line of weakness, said line of weakness would also include continuous cut line. Figure-1 also shows that the cut line (14a) extends from the first label to the second label via the weakened line (50).

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The phrase "adapted to be and capable of being bent back...peeled off of the liner sheet" has not been given patentable weight because it is not found to be of positive limitation as it only requires the ability to so perform and is not found to be of positive limitation. This is because where, as in here, the claim features are recited structurally or functionally, the claims must be structurally distinguishable from the prior art. See MPEP 2114.

Regarding claim 21, the label cut line (57) appears to be a continuous cut line as shown in figure-1.

Claim 22 is shown by the presence of additional third label on the continuous sheet (12), which are aligned in a row and a continuous elongate line segment (14a) is present between the second and the third labels.

For claim 23, the functional phrase "when the facestock is bent back...can be grasped and ...peeled off of the liner sheet" is directed to an intended use of the claimed label sheet construction and has not been given any patentable weight because it is not found to be of positive limitation. See MPEP 2114.

Regarding claim 24, figure-1 shows that the label has first and second parallel ends and the elongate cut line is parallel to the and spaced between the parallel ends.

Claim 25, the second cut line is shown by the portion of line (14a) that extends between the label cut line (57) and an edge of the facestock sheet, said second cut line is lying on the fold line.

Claim 26, the labels are rectangularly shaped (figure-1).

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For claim 29, the line sheet has a release coating (51a) and adhesive 9510 between the facestock sheet and the release coating.

For claims 44, 50, see above explanation for claim 19 label sheet construction structure and the intended use language.

Regarding claim 65, the line portion (14a) can be other than a weakened line portion as it can include other than perforation line (col. 5, lines 40-42).

For claim 69, the intended use phrase "can be bent on the weakened fold line...can be peeled off of the liner sheet" has not been given any patentable weight because it is not deemed to be of positive limitation as it optional functional language.

For claim 77, the label web of Farrow is interpreted to include a first line of labels and followed by a second line of labels that are parallel to each other and are spaced from each other.

Regarding claim 84, the line (14a) of Farrow extends via line (50) to the line (14a) of the second label, and on to the third label.

For claim 89, the centerpoint of the labels define a centerpoint line.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrow. Farrow, as discussed above, fails to teach that the label can be of circular shape. It would have been an obvious matter of design choice to modify Farrow to provide a label having circular shape for aesthetic appeal, since such a modification involves a mere change in the shape of the label product. A change in shape is found to within the level of ordinary skill in the art.

12. Claims 28, 57-62, 101, 109, 114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrow. Farrow, as discussed above, fails to teach that the facestock sheet includes a plurality of labels arranged in a multi-column, multi-row array. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the facestock sheet with multi-column, multi-row array of labels because it is found to be obvious duplication of the essential working parts of the label facestock sheet to provide for plurality of said labels.

Similarly, for claim 57, providing the second fold line would have been obvious duplication of the essential working parts of the sheet construction to add flexibility to the sheet construction.

13. Claims 49, 56, 63-64, 66, 68, 70, 74, 78, 86, 91, 93, are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrow

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Farrow, as discussed above, fails to teach that the label has a burst configuration. It would have been obvious matter of design choice to modify Farrow by providing the label to have a shape of a burst configuration for aesthetic appeal, since such a modification involves a mere change in the shape of the label product. A change in shape is found to within the level of ordinary skill in the art.

Response to Arguments

14. Applicant's arguments filed 7/10/2006 and 8/10/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that examiner is requested to provide detailed explanations for the phrases "capable of", "adapted to", etc. , applicant's attention is directed to **MPEP 211.04** and **2114** for these functional phrases. Applicant is informed that said phrases only requires the ability to perform and hence, make the language following said phrases optional but does not require the steps to be performed. Thus, said phrases does not limit the claim to a particular structure.

The arguments presented by the applicant regarding Atkinson is moot in view of the withdrawal of the rejections based on said prior art.

As for Farrow, Applicant is directed to the new art rejection presented hereinabove. It has been explained that the line (14a) is taken to be the weakened cut line and it does pass through the label to define a weakened fold line. Applicant is also directed to

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Farrow, col. 5, lines 24-28, wherein it is clearly mentioned that the cut line (57) defines the label and the waste portion surrounding the label is not shown.

Applicant argues that line (50) is a perforation line and not a cut line but fails to show the difference between the two. As such, if applicant maintains said position, then applicant is requested to provide detailed explanation, with support from the originally filed disclosure as to the difference between the two as alleged.

Responding to applicant's argument that line (14a) is not for easy removal of the sheet, applicant is informed that "for easy removal" could not be located in claims and cannot be read thereinto for the purpose of avoiding the prior art. Further, applicant should note that the phrase "for easy removal" is directed to an intended future use of the claimed product and is not a positive limitation for said product.

As for Farrow, col. 5, line 40-45, it is noted by the examiner that the phrase, quoted by the applicant teaches that the weakened line (14a) may be optionally provided on **either** or **both** the facestock and the liner. This clearly indicates that the option of having the weakened line can be on the facestock and not the liner, thus anticipating the claimed feature.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Nasser Ahmad 10/27/06
Primary Examiner
Art Unit 1772

N. Ahmad.
October 27, 2006.